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**INFORMATION FOR EMPLOYERS REGARDING 2011 WISCONSIN ACT 10**

2011 Wisconsin Act 10 contains a number of provisions that affect the retirement and health insurance programs administered by the Department of Employee Trust Funds (ETF). ETF and Wisconsin Retirement System (WRS) employers have received numerous questions about Act 10. This document is intended to help WRS employers begin to plan for the implementation of the Act 10 provisions if and when the provisions become effective. ETF also developed a frequently asked question document for WRS members to help answer employee questions related to the Act. It is important to note that the effective date of the Act is not known at this time, and the Act is subject to various court challenges. Therefore, ETF's guidance on the Act could change in the future in response to future legislative and legal developments. This document only focuses on the provisions of the Act that relate to the programs administered by ETF. In particular, the primary focus of this document is the WRS. The health insurance questions are answered in the member FAQ.

- For the member FAQ visit: [http://etf.wi.gov/news/Budget\\_Repair\\_Bill\\_Whats\\_New.pdf](http://etf.wi.gov/news/Budget_Repair_Bill_Whats_New.pdf)
- For the Act 10 language visit: <http://legis.wisconsin.gov/11Act010.pdf>

This document has the following sections.

1. WRS Contribution Changes
2. Effective Date
3. Formula Multiplier Changes
4. Employer Reporting Instructions
5. Common Questions

**1. WRS CONTRIBUTION CHANGES**

Act 10 makes changes to the employee and employer required contributions to the Wisconsin Retirement System (WRS). The change to WRS contribution rates applies to all WRS employers and all WRS employees who do not have a collective bargaining agreement in place prior to the effective date of the Act.

- General/Teacher/Educational Support Employees: 50% of the actuarially required WRS contributions are reportable as employee required contributions,<sup>1</sup> and the remaining 50% as employer required contributions. The 2011 total WRS contribution for general employees is 11.6% of earnings, which means that 5.8% of earnings must be reported

<sup>1</sup> *In the past, the employee required contribution rate for this employment category has been 5%. That rate will increase to 5.8% in 2011 due to Act 10, and that entire amount will be credited to members' accounts. This will have the effect of increasing WRS benefits that are based on the member's account balance, including separation benefits, money purchase retirement benefits and death benefits from accounts that have not been annuitized.*

as employee required contributions, and 5.8% reported as employer required contributions.

- Elected Officials and Executive Employees: 50% of the actuarially required WRS contributions are reportable as employee required contributions,<sup>2</sup> and the remaining 50% as employer required contributions. The 2011 total WRS contribution for elected and executive employees is 13.3% of earnings, which means that 6.65% of earnings must be reported as employee required contributions, and 6.65% reported as employer required contributions.
- Protective Category Employees with Social Security Coverage: The employee required contribution rate for Protectives with Social Security is the same as general category employees, which in 2011 is 5.8%. The total WRS contribution is 14.7% in 2011, so 8.9% of earnings is reportable as employer required contributions.
- Protective Category Employees without Social Security: The employee required contribution rate for Protectives without Social Security is the same as general category employees, which in 2011 is 5.8%.<sup>3</sup> The total WRS contribution is 17.0% in 2011, so 11.2% of earnings is reportable as employer required contributions.

EE Category	Pre-Act 10 Rates in 2011				Post-Act 10 Rates in 2011		
	EERC	BAC	ERRC	Total	EERC	ERRC	Total
General	5.0%	1.5%	5.1%	11.6%	5.8%	5.8%	11.6%
Protective w/SS	5.8%	0%	8.9%	14.7%	5.8%	8.9%	14.7%
Protective w/out SS	4.8%	0%	12.2%	17.0%	5.8%	11.2%	17.0%
Elected/Executive	3.9%	0%	9.4%	13.3%	6.65%	6.65%	13.3%

WRS contribution rates are adjusted each calendar year depending on investment performance and actuarial factors.

Notes about table above:

EE=employee

ER=employer

RC=required contribution

BAC=Benefit Adjustment Contribution

## 2. EFFECTIVE DATE

Currently, the effective date of the changes to contribution rates and other provisions of the Act is unknown. Act 10 stated that the WRS contribution changes were to be effective on the first day of the first payroll period that began after March 13, 2011, and apply to employees who are

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<sup>2</sup> Prior to Act 10, the employee required contribution rate for this employment category was 3.9%. This rate will increase to 6.65% in 2011 due to Act 10, and that entire amount will be credited to members' accounts. This will have the effect of increasing WRS benefits that are based on the member's account balance, including separation benefits, money purchase retirement benefits and death benefits from accounts that have not been annuitized.

<sup>3</sup> Prior to Act 10, the employee required contribution rate for the Protective Without Social Security employment category was 4.8%. This rate will increase to 5.8% in 2011 due to Act 10, and that entire amount will be credited to members' accounts. This will have the effect of increasing WRS benefits that are based on the member's account balance, including separation benefits, money purchase retirement benefits and death benefits from accounts that have not been annuitized.

covered by a collective bargaining agreement that contains provisions inconsistent with certain sections of the Act on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first. Recent legal proceedings have prevented implementation of the Act.

### **3. FORMULA MULTIPLIER CHANGE**

Act 10 provides that the WRS formula multiplier decreases from 2.0% to 1.6% for executive members, elected officials (state and local), constitutional officers, Supreme Court justices, and Appeals Court and Circuit Court judges.

Once the effective date of the Act is determined, the effective date of the change to the multiplier will vary among these different employee categories. More information about the employee categories can be found in Chapter 4 of the WRS Employer Administration Manual.

- **Executive Retirement Plan and Teacher Executive Retirement Plan Members** (Employment Category Codes 02 and 11, respectively): The new formula multiplier applies to service earned in these categories after the effective date of Act 10.
- **State Elected Officials/Constitutional Officers and Local Elected Officials** (Employment Category Codes 06 and 09, respectively): The new formula multiplier applies to service earned by each WRS member in one of these categories on the first day of a term of office that begins after the effective date of Act 10.
- **Supreme Court Justice, Court of Appeals Judge and Circuit Court Judge** (Employment Category Codes 05, 07 and 08, respectively): The new formula multiplier applies to service earned after a judge or justice in any one of these categories assumes office after the effective date of the Act. In other words, whenever any new judge or justice assumes office after the effective date of the Act, the new formula multiplier applies to all service earned by all judges and justices in all three categories.

*ETF will provide more guidance to employers about how to report service that will be subject to the 1.6% formula multiplier as soon as that information becomes available.* However, these members cannot be reported as general category members, because while they will have the same formula multiplier as general category members they will still have a different Normal Retirement Age (NRA).

Finally, the total (employee and employer combined) contribution rate for these members will not change for the remainder of 2011. Beginning in 2012, the changed benefit will factor into the contribution rates for the service earned after the multiplier change.

### **4. EMPLOYER REPORTING**

#### Important Note about Reporting:

Due to the provisions in Act 10, there will be variations in: 1) the effective date of the WRS employee contributions changes (based on whether or not there is an existing collective bargaining agreement in place); 2) the taxability of those contributions; and 3) the effective date of the multiplier change for elected official and executive category employees.

ETF is in the process of reviewing our employer reporting mechanisms and our systems to determine what changes will need to be made to accommodate the Act 10 provisions. At this time, we are still determining what data elements employers will need to report for purposes of the WRS and will issue more guidance in the near future. Employers should be prepared, however, to report individual employee level detail on a more routine basis than currently required.

In the meantime, below are some interim reporting instructions that could be used if the Act is effective before modifications to ETF's reporting systems can be implemented.

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**Note:** If an employer chooses to implement pre-tax employee paid contributions, do not report these contributions to ETF on any periodic transaction, such as a termination or employment category change, in the EERC (Employee Required Contribution) or BAC (Benefit Adjustment Contribution) fields. These fields currently assess the EERC and the BAC as post-tax contributions. Until ETF updates the reporting applications and forms with fields for pre-tax employee paid contributions, employers should track the amounts of pre-tax contributions for reporting at a later time.

#### Monthly Remittance Reporting:

- No changes to the monthly remittance reporting, as those reports consist of reporting the *total* earnings and the *total* contributions by employment category paid to ETF.<sup>4</sup>

#### Periodic Reporting for Current Year:

- Existing Collective Bargaining Agreement: Report all post-tax contributions (if applicable) paid by the employee when reporting transactions with hours and/or earnings (i.e. termination, employment category change, etc.) in the fields Deducted from Employee – Employee Required Contribution (EERC) and Benefit Adjustment Contribution (BAC). Since Act 10 does not take effect initially for these employees, any employee paid contributions must be allocated between the EERC and the BAC. This will ensure the employee is not taxed on the amount of employee paid contributions (if applicable) taken post-tax when a benefit is taken. Do not report any pre-tax employee paid contributions until ETF has updated the reporting applications and forms with fields for pre-tax employee paid contributions.
- No Collective Bargaining Agreement: Report all post-tax required contributions paid by employee when reporting transactions with hours and/or earnings (i.e. termination, employment category change, etc.) in the field Deducted from Employee – Employee Required Contribution. This will ensure the employee is not taxed on the amount of employee paid contributions taken post-tax when a benefit is taken. Do not report any pre-tax employee paid contributions until ETF has updated the reporting applications and forms with fields for pre-tax employee paid contributions.

#### Periodic Reporting for Prior Year:

- Report all post-tax contributions (if applicable) paid by employee for prior year transactions with hours and/or earnings (i.e. contract settlement, corrections to a prior year, etc.) in the fields Deducted from Employee – Employee Required Contribution and Benefit Adjustment Contribution. Any corrections prior to the effective date of Act 10 to employee paid contributions must be allocated between the EERC and the BAC. This will ensure the employee is not taxed on the amount of employee paid contributions (if applicable) taken post-tax when a benefit is taken.

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<sup>4</sup> While employers may be deducting employee required contributions directly from the employee, along with the corresponding employer required contributions, the monthly remittance report only consists of total contributions, and does not include that breakdown.

## Annual Reporting:

- Existing Collective Bargaining Agreement: Report all post-tax contributions (if applicable) paid by the employee during the previous year in the field Deducted from Employee – Employee Required Contribution and Benefit Adjustment Contribution. Since Act 10 does not take effect initially for these employees, any employee paid contributions must be allocated between the EERC and the BAC. This will ensure the employee is not taxed on the amount of employee paid contributions (if applicable) taken post-tax when a benefit is taken.
- No Collective Bargaining Agreement: Report all post-tax required contributions paid by the employee during the previous year in the field Deducted from Employee – Employee Required Contribution. This will ensure the employee is not taxed on the amount of required employee paid contributions taken post-tax when a benefit is taken.

## **5. COMMON QUESTIONS**

- 1) **Does Act 10 affect the duty disability, sick leave credits (state only), and other contributions?**
  - No. These liabilities remain the responsibility of the employer, and cannot be shared with the employee.
- 2) **If an employer pays an additional amount for an unfunded actuarial accrued liability, does that remain the responsibility of the employer?**
  - Yes.
- 3) **Are the WRS employee contributions pre-tax or post-tax?**
  - Act 10 does not explicitly state whether an employee's WRS contribution is pre-tax or post-tax. Absent a change in Wisconsin state statute, a compensation agreement between the employer and employee(s), or a local resolution or ordinance that follows the necessary procedures as defined by IRS rulings, the contributions are post-tax. However, ETF does not determine whether an employee contribution is pre-tax or post-tax. That determination is made by employers (state and local governments), subject to state and federal law. ETF strongly recommends that local employers consult with their legal counsel if the local employer is interested in pre-tax treatment of the employee required contributions.
  - Note: If an employer chooses to implement pre-tax employee paid contributions, do not report these contributions to ETF on any periodic transaction, such as a termination or employment category change, in the EERC (Employee Required Contribution) or BAC (Benefit Adjustment Contribution) fields. These fields currently assess the EERC and the BAC as post-tax contributions. Until ETF updates the reporting applications and forms with fields for pre-tax employee paid contributions, employers should track the amounts of pre-tax contributions for reporting at a later time.

**4) My local government governing body approved a resolution to treat WRS employee required contributions on a pre-tax basis? How do I report this for each employee?**

- As alluded to in the Employer Reporting section of this document, ETF is undergoing analysis of the system modifications needed to accommodate reporting of employee paid contributions on a pre-tax basis. Until such system changes can be made and related instructions communicated, employers should keep a detailed separate accounting of any such pre-tax contributions made in order to report and/or reconcile to ETF after the fact.

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**5) Which protectives with Social Security and protectives without Social Security are exempt from the Act 10 provisions related to collective bargaining?**

- The Act repeals the current statutory authority for WRS employers (both the state and local), except in certain cases, to pay all or part of the WRS contributions required of participating employees. Such contributions are prohibited unless they are required in a collective bargaining agreement with represented local police, local firefighters, state troopers, or state inspectors.
- Sections 9332(1) and 9355(1) of Act 10 state when the provisions apply.
- For more information about the collective bargaining provisions in Act 10 and what protective occupation employees the provisions apply to, go to page 38 of this Legislative Fiscal Bureau document: [http://legis.wisconsin.gov/lfb/2011-13Bills/2011\\_02\\_17WILEGISLATURE\\_Governor\\_JFC.pdf](http://legis.wisconsin.gov/lfb/2011-13Bills/2011_02_17WILEGISLATURE_Governor_JFC.pdf)
- Note: The Legislative Fiscal Bureau document is dated February 17<sup>th</sup>, 2011 and was prepared during the legislative deliberation process. Some of the provisions addressed in the document are not included in Act 10; however, the content about collective bargaining is included in Act 10 and is still relevant.
- ETF does not play a role in the enforcement of the collective bargaining agreements. Consult your legal counsel if you have more detailed questions about the collective bargaining provisions in Act 10.

**6) If an employer has an individual compensation and fringe benefit agreement/contract with an employee and it isn't a collective bargaining agreement, do the collective bargaining provisions in Act 10 affect the agreement/contract between the employer and employee?**

- ETF cannot answer this question. ETF does not play a role in the enforcement and interpretation of collective bargaining agreements or the collective bargaining changes in Act 10. ETF recommends that employers consult with their legal counsel.

**7) What if an employee belongs to multiple employment categories?**

- Earnings from employment covered by a collective bargaining agreement that specifies who pays the employee required contribution part of the rate would be held to that percentage. The earnings in any other employment category not covered by any agreement would be subject to the rates specified by Act 10.

**8) A teacher works the 2010-11 school year. The teacher has elected to have his/her earnings spread out over 12 months. The employer must report summer payments in the July 1, 2010-June 30, 2011 fiscal year, since the contract expires on June 30<sup>th</sup>. How does the employer determine from which earnings to withhold the 5.8%?**

- Some teachers under 9-month contracts elect to defer their salary over 12 months. Payments made through the summer months constitute earnings which may precede the effective date of Act 10. In these cases where there isn't a collective bargaining agreement in place, the employer should determine the actual salary earned during a period of time covered by Act 10 through the end of the contract, multiply that by 5.8% (for 2011), and withhold that amount from the employee. Employers can then withhold equal amounts from each paycheck.

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**9) What if an employee is paying more in employee required contributions than Act 10 requires, for example by paying the employee share and the Benefit Adjustment Contribution (BAC)?**

- If there is no collective bargaining agreement in place, and an employee is paying more in employee required contributions than Act 10 would require, the employee required contributions would be reduced to 5.8% for 2011. Act 10 eliminated the BAC for employees without collective bargaining agreements.

**10) If an employer is unable to modify its payroll procedures in time to start collecting the increased employee contribution when due, must the contributions be recovered all at once as soon as the payroll system is modified, or can the collection of the contributions be spread over the remaining pay periods before July 1, 2011?**

- Under Act 10, the entire amount of employee paid contributions does not have to be collected all at once. It can be collected over a number of payroll periods, as long as all of the contributions have been collected in full by July 1, 2011. Note that the July 1, 2011 date in the Act could change due to legislative and legal developments.

**11) It appears the Act requires the change to be effective with the first day of the first payroll following the effective date, and not based on the timing of the paychecks.**

- The Act requires the change to be effective with the first day of the first payroll following the effective date, and not based on the timing of the paychecks.

#### **What type of retirement plan is the WRS?**

- The WRS is a cost-sharing multiple-employer public employee retirement system established and administered by the State of Wisconsin to provide pension benefits for state and local government employees. The WRS is a qualified governmental defined benefit plan under IRC Section 401(a).

**12) Who do I contact if I have additional questions?**

- It is difficult to provide detailed guidance to employers at this time due to the status of the Act. ETF recommends checking our Internet site for updates to this information on a frequent basis. Employers are encouraged to send their specific questions to ETF via e-mail using the "Contact Us" feature of the employer page on the ETF Internet site. Although we may not be able to answer the questions at this time, it will help us make future communications more helpful to employers.